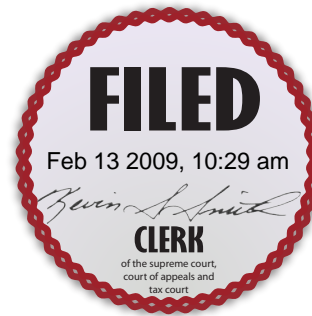


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RUDOLFO RODRIGUEZ,

Appellant,

vs.

RAINBOW SEARCHERS, INC.,

Appellee.

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No. 76A03-0807-CV-336

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
The Honorable Randall L. Coffey, Magistrate
Cause No. 76D01-0704-SC-439

February 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Rudolfo Rodriguez, Jr. appeals the small claims court's judgment entered against him in an action filed by Rainbow Searchers, Inc. ("Rainbow").

We reverse and remand.

ISSUE

Rodriguez raises two issues, one of which we find dispositive: Whether Rainbow lacked standing to bring its action.

FACTS

On December 6, 2006, Rodriguez sold real property located at 235 North 600 East, Angola in Steuben County (the "Property") to Richard Williams. Lakeview Title, LLC ("Lakeview") provided the closing settlement statement and obtained title insurance services for the transaction. These services included the preparation of the commitment to issue a title insurance policy. The title insurance commitment was "a legal contract . . . issued to show the basis on which" the title insurance policy was issued and subject to the commitment's stated exceptions unless such exceptions were "taken care of" to the title insurance company's satisfaction. (Ex. 1). The exceptions included taxes due in 2005 and payable in 2006. The title commitment further required "[p]ayment of all taxes, charges, and assessments levied and/or assessed against the" Property, "which are due and payable." (Ex. 1).

In order to prepare the title insurance commitment, Lakeview's closing agent, Jodi Getz, retained Rainbow to search for liens or encumbrances on the Property. Rainbow, in

turn, hired Roberta Deem, an independent abstractor, to conduct the title search. Utilizing only a website of the Steuben County Treasurer's Office, Deem searched for taxes due and owing on the Property. She did not find any indication that there had been a tax sale of the Property and apparently conveyed the results of her search to Rainbow.

Subsequently, Getz prepared the title insurance commitment, effective November 6, 2006, and held the closing on December 6, 2006. The title insurance commitment showed that taxes due in 2005 and payable in 2006 had been paid in the total amount of \$647.64. The closing settlement statement—prepared by Lakeview and signed by Rodriguez—showed that taxes in the amount of \$647.64 were assessed in 2005 and paid in 2006.

Before it would issue a policy of title insurance, the title insurance company required Rodriguez to sign an owner's affidavit, in which he averred that there were no tax liens affecting the Property. He further averred that there were no unpaid property taxes assessed against the Property, "other than those to be paid at settlement[.]" (Ex. 3). He also averred in a vendor closing affidavit that the Property was "free and clear of all taxes, liens, encumbrances, assessments, charges or leases of whatsoever, kind or nature, except those shown in the Title Commitment[.]" (Ex. 4). Upon closing, Rodriguez conveyed the Property to Williams by warranty deed. Rodriguez received \$75,957.17 from the sale.

After the closing, Getz took the mortgage and warranty deed to the Steuben County Auditor's Office to be recorded. She was notified that taxes on the Property had

become delinquent. As a result, the Property had been included in a tax sale on September 29, 2006, and sold for \$2,467.12. The Steuben County Auditor's Office had mailed a notice of tax sale to Rodriguez at the Property's address on August 2, 2006.

Since the title insurance commitment requires "that the taxes are paid" before a title insurance policy would be issued, Lakeview redeemed the Property by paying \$3,685.79, which included past due taxes, penalties and interest. (Tr. 22). Lakeview chose to redeem the Property as soon as possible to avoid the accrual of additional interest.

Subsequently, Deem wrote a check to Rainbow for "the amount of the tax sale" rather than submitting a claim to her insurance company. (Tr. 44). On January 3, 2007, Rainbow issued a check in the amount of \$3,685.79 to Lakeview.

On April 17, 2007, Rainbow filed a notice of claim against Rodriguez in the Steuben Superior Court, Small Claims Division. The trial court held a bench trial on April 8, 2008. Deem testified that she "wrote a check to Rainbow . . . for . . . the amount of the tax sale," namely "\$3,685.79[.]" (Tr. 44, 45). Rainbow's president testified that Rainbow was seeking monies from Rodriguez "to settle up . . . with [Deem.]" (Tr. 54).

On May 19, 2008, the trial court found as follows:

2. [Rodriguez] sold real property to another. [Rainbow] completed a title search in regard to [the] sale of the real estate. [Rodriguez] failed to inform the buyer of taxes that were due on the property. Because of that failure, [Rainbow] paid the unpaid taxes that [Rodriguez] failed to pay. [Rainbow] now seeks reimbursement of that tax payment.

3. [Rodriguez] owed taxes in the amount of \$3,685.79. He was unjustly enriched by [Rainbow]'s payment of those taxes on his behalf. He should repay [Rainbow], and should also pay interest of eight per cent (8%) from December 18, 2006 (\$418.46 through May 19, 2008).

(App. 4). The trial court entered judgment against Rodriguez in the amount of \$4,104.25, plus court costs of \$88.00.

DECISION

Rodriguez asserts that the trial court erred in awarding judgment to Rainbow.

Judgments in small claims actions are “subject to review as prescribed by relevant Indiana rules and statutes.” When reviewing claims tried by the bench without a jury, the reviewing court shall not set aside the judgment “unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. A judgment in favor of a party having the burden of proof . . . will be affirmed if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party’s claim were established by a preponderance of the evidence. This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.

Tucker v. Duke, 873 N.E.2d 664, 668 (Ind. Ct. App. 2007) (footnote and citation omitted), *trans. denied*. “But this deferential standard does not apply to the substantive rules of law, which are reviewed de novo just as they are in appeals from a court of general jurisdiction.” *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Furthermore, special findings do not guide our review. *Bennett v. Broderick*, 858 N.E.2d 1044, 1048 (Ind. Ct. App. 2006), *trans. denied*.

Rodriguez argues that Rainbow lacked standing to assert its claim. Specifically, he asserts that Rainbow suffered no injury as it “has not paid any monies or suffered any loss” Rodriguez’s Br. at 5. Rather, it merely “was a conduit for money [it] received from the actual abstractor, Roberta Deem.” *Id.* Rainbow, however, argues that it has suffered a direct injury because Rodriguez’s failure to disclose the delinquent taxes “resulted in [it] facing liability to Lakeview and/or the title insurance company which ultimately insured clear title to the Property.”¹ Rainbow’s Br. at 22.

[T]he question of standing is generally one of law, not fact. Standing is a judicial doctrine that focuses on whether the complaining party is the proper party to invoke the trial court’s jurisdiction. The

¹ Rainbow also argues that “pursuant to Indiana’s collateral source rule, any reimbursement” it received from Deem “cannot be considered as probative evidence in this matter” Rainbow’s Br. at 23. Indiana once recognized the common law collateral source rule, “which prohibited defendants from introducing evidence of compensation received by plaintiffs from collateral sources, i.e., sources other than the defendant, to reduce damage awards.” *Pendleton v. Aguilar*, 827 N.E.2d 614, 620 (Ind. Ct. App. 2005), *trans. denied*. In 1986, however, our legislature abrogated the common law collateral source rule when it enacted Indiana Code section 34-44-1-2. That statute provides:

In a personal injury or wrongful death action, the court shall allow the admission into evidence of:

(1) proof of collateral source payments other than:

(A) payments of life insurance or other death benefits;

(B) insurance benefits for which the plaintiff or members of the plaintiff’s family have paid for directly; or

(C) payments made by:

(i) the state or the United States; or

(ii) any agency, instrumentality, or subdivision of the state or the United States;

that have been made before trial to a plaintiff as compensation for the loss or injury for which the action is brought;

(2) proof of the amount of money that the plaintiff is required to repay, including worker’s compensation benefits, as a result of the collateral benefits received; and

(3) proof of the cost to the plaintiff or to members of the plaintiff’s family of collateral benefits received by the plaintiff or the plaintiff’s family.

Thus, “instead of evidence of collateral source payments being prohibited, now evidence of collateral source payments may not be excluded except for the specified statutory exceptions.” *Id.* Clearly, this action is neither a personal injury nor wrongful death action. Furthermore, the payment from Deem to Rainbow does not fall within the specified exceptions. We therefore cannot say that the collateral source rule applies in this case.

standing requirement “is a limit on the court’s jurisdiction which restrains the judiciary to resolving real controversies in which the complaining party has a demonstrable injury.” To establish standing, the plaintiff must ““demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a result of the conduct at issue.””

Vectren Energy Mktg. & Serv., Inc. v. Executive Risk Specialty Ins. Co., 875 N.E.2d 774, 777 (Ind. Ct. App. 2007) (citations omitted). “Thus, for a plaintiff to have standing his interest ‘must be a present, substantial interest, as distinguished from a mere expectancy or future contingent interest.’” *First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 612 (Ind. Ct. App. 2008) (quoting *Inlow v. Henderson, Daily Withrow & DeVoe*, 787 N.E.2d 385, 395 (Ind. Ct. App. 2003), *trans. denied*), *trans. denied*.

The evidence shows that Rainbow reimbursed Lakeview for the amount of the redemption from funds that Deem had given Rainbow after her failure to discover the tax sale came to light.² We cannot say that Rainbow has met the standing requirement, where it did not suffer any financial injury or claim against it. Its assertion of liability is merely speculative. As there is no demonstrable injury to Rainbow, we find that the trial court erred in exercising jurisdiction over Rainbow’s complaint.

Asserting that Rainbow’s action was groundless due to lack of standing, Rodriguez requests attorney’s fees pursuant to Indiana Code section 34-52-1-1. Indiana Code section 34-52-1-1 provides, in part, as follows:

² Rainbow contends that “[t]he evidence leaves room for an inference that [it] received only partial payment” from Deem. Rainbow’s Br. at 27. We disagree. Rainbow’s president testified that it issued a check to Lakeview in the amount of \$3,685.79, which was the amount of the tax sale. Deem testified that she “wrote a check to Rainbow Searchers for . . . the amount of the tax sale.” (Tr. 44).

(b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
- (3) litigated the action in bad faith.

It is within the trial court's discretion to award attorney fees pursuant to this statute where it has found one or more of the acts described in subsection (b). *Commercial Coin Laundry Sys. v. Enneking*, 766 N.E.2d 433, 441 (Ind. Ct. App. 2002). We therefore reverse the trial court's judgment in favor of Rainbow and remand to the trial court for a determination of whether attorney's fees are appropriate in this case.³

Reversed and remanded.

RILEY, J., and VAIDIK, J., concur.

³ We note that Rodriguez does not seek attorney's fees pursuant to Indiana Appellate Rule 67.